

D.P.U. 91-234-E

Petition of Commonwealth Electric Company and Cambridge Electric Light Company, pursuant to M.G.L. c. 164, §§ 69I, 76, 94, and 220 C.M.R. §§ 10.00 et seq., for review of the procedures by which additional energy resources are planned, solicited, and procured by Commonwealth Electric Company and Cambridge Electric Light Company.

D.P.U. 94-115

Petition of SESCO, Inc., pursuant to 220 C.M.R. § 10.07(3), requesting the Department of Public Utilities to investigate the disqualification of the bid of SESCO, Inc. by Commonwealth Electric Company and Cambridge Electric Light Company.

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I. INTRODUCTION

On April 1, 1994, Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge", together "Companies") submitted their integrated resource management ("IRM") Phase III Filing to the Department of Public Utilities ("Department") for review.¹ The Department conducted a prehearing conference on April 11, 1994, and evidentiary hearings on April 19, 1994 and May 10, 1994.² On May 31, 1994, the Department issued its Order on the Companies' Phase III filing.³

Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-B

¹ On April 7, 1994, the Department advised the Companies that they would need to supplement their Phase III filing with the identification of an award group. On May 5, 1994, the Companies submitted a supplemental Phase III filing, which included a proposed award group.

² On May 10, 1994, the Hearing Officer established a briefing schedule requesting initial briefs on May 18, 1994 and reply briefs on May 20, 1994. Initial briefs were submitted by the Companies, the Attorney General, SESCO, and CES/Way. Reply briefs were submitted by the Companies, SESCO, and CES/Way.

³ In its Reply Brief, SESCO contended that, based on the response to DPU-III-RR-7, certain proposals failed to meet the minimum threshold requirements of the RFP and should not have been accepted for evaluation, and requested the opportunity to cross-examine the witness responsible for the response. Specifically, SESCO contended that neither Planergy for Cambridge nor ARCA for Commonwealth met the minimum comprehensiveness thresholds for the residential heating segment, and that Planergy, ARCA, and Citizens Conservation Corporation did not meet the minimum comprehensiveness thresholds for the residential non-heating segment at both Cambridge and Commonwealth. The Department found that Planergy and ARCA did not meet the Companies' minimum comprehensiveness thresholds for both the residential heating and non-heating segments, and directed the Companies to respecify the award group without the inclusion of these proposals. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-B at 13 (1994). With this exception, the Department found the Companies' screening process acceptable. Id. As a result of these findings, the Department denied SESCO's request as moot. Id., at note 15.

(1994) ("D.P.U. 91-234-B"). On June 3, 1994, the Companies submitted a filing including, among other things, contracts for approval by the Department in Phase IV of the IRM process.⁴ On June 6, 1994, SESCO submitted a Motion to Reopen Hearings and/or Motion for Reconsideration ("June 6, 1994 Motion").⁵ On June 13, 1994, the Companies submitted a Response to SESCO's June 6, 1994 Motion ("June 13, 1994 Response"). On June 22, 1994, SESCO submitted a Reply to the June 13, 1994 Response of the Companies ("June 22, 1994 Reply"). With the June 22, 1994 Reply, SESCO submitted a data request for all information provided by the Companies as confidential or proprietary in Phase III and Phase IV of D.P.U. 91-234 ("June 22, 1994 Request"),⁶ and a Motion to Compel Production ("June 22, 1994 Motion").⁷ On June 30, 1994, the Companies submitted a Response to SESCO's

⁴ On June 21, 1994, the Companies supplemented their June 3, 1994 filing with additional contracts, and on June 29, 1994, the Companies submitted a second supplement to their June 3, 1994 filing.

⁵ SESCO did not file a motion to stay the judicial appeal period pending resolution of its June 6, 1994 Motion.

⁶ SESCO's request for information provided by the Companies as confidential or proprietary in D.P.U. 91-234 is made with its motions for reconsideration of D.P.U. 91-234-B, D.P.U. 91-234-C, and its petition as an aggrieved bidder (see D.P.U. 94-115, below). The Companies' requests for confidential treatment of information submitted for Department review have been granted by the Hearing Officer in D.P.U. 91-234. See Tr. 1, at 11-20; Tr. 2, at 10-15; and Hearing Officer Ruling, May 31, 1994. SESCO did not appeal these rulings. See also Hearing Officer Ruling, issued with this Order. Accordingly, SESCO's request is addressed in D.P.U. 94-115.

⁷ On June 9, 1994, SESCO submitted a request to the Companies for documents for which the Companies have requested confidential treatment through Phase IV of the IRM process ("June 9, 1994 SESCO Letter"). On June 16, 1994, the Companies responded to the SESCO's request, and declined to provide the requested information ("June 16, 1994 Companies Letter").

June 22, 1994 Motion ("June 30, 1994 Response").

On June 30, 1994, the Department issued an Order providing, among other things, Phase IV approval of contracts filed on June 3, 1994 and June 21, 1994.⁸ Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-C (1994) ("D.P.U. 91-234-C"). On July 11, 1994, SESCO, Inc. submitted a Motion to Reconsider the Order of Department issued June 30, 1994, and a Request to Re-open the Proceeding ("July 11, 1994 Motion").⁹

On June 7, 1994, pursuant to 220 C.M.R. § 10.07(3), SESCO filed a petition for investigation with the Department as an aggrieved bidder in D.P.U. 91-234 ("June 7, 1994 Petition"). The June 7, 1994 Petition has been docketed as D.P.U. 94-115. On June 16, 1994, the Companies filed a petition to intervene in D.P.U. 94-115, ("June 16, 1994 Petition") and submitted a Motion to Dismiss the June 7, 1994 Petition ("June 16, 1994 Motion").

In D.P.U. 91-234-E, the Department reviews the motions of SESCO. See Section II, below. In D.P.U. 94-115, the Department reviews SESCO's Petition as an aggrieved bidder. See Section III, below.

⁸ Contracts filed with the June 29, 1994 supplemental filing were not approved in D.P.U. 91-234-C. On July 29, 1994, the Department issued an Order providing Phase IV approval of contracts filed on June 29, 1994. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-D (1994).

⁹ With its July 11, 1994 Motion, SESCO requested a stay of the judicial appeal period until ten day after the Department's ruling on SESCO's motion. On July 13, 1994, at the request of the Hearing Officer, SESCO submitted a separate motion for stay of the judicial appeal period, and on July 19, 1994, the Department granted this motion.

II. D.P.U. 91-234-E

A. SESCO'S Motions

1. Motion to Reopen Hearings

a. June 6, 1994 Motion

SESCO stated that, based on the response to DPU-RR-III-7, Citizens Conservation Corporation ("Citizens") appears to have excluded water heating measures from its bid, and therefore did not meet the minimum comprehensiveness threshold requirements of the RFP (June 6, 1994 Motion at 2). Therefore, SESCO stated that cross-examination is still necessary (id.).

In its June 22, 1994 Reply, SESCO stated that its participation in the proceeding has been impaired by the confidential treatment allowed certain documents, however, based on the Companies' June 13, 1994 Response, an additional hearing on the DPU-III-RR-7 may not be necessary (June 22, 1994 Reply at 2). SESCO stated that further review of the Companies' Phase III filing based on information contained in documents granted confidential treatment is necessary (June 22, 1994 Reply at 2).

b. July 11, 1994 Motion

SESCO requested that the Department re-open D.P.U. 91-234 and that it be given an opportunity to comment on the contracts filed to date in Phase IV of the proceeding (July 11, 1994 Motion at 3).

2. Motion for Reconsideration

a. June 6, 1994 Motion

SESCO contended that Citizens failed to include water heating measures in its bid, and that its bid does not meet the minimum comprehensiveness threshold requirements (June 6, 1994 Motion at 2). Accordingly, SESCO contended that the Department should reconsider its Order in D.P.U. 91-234-B and exclude Citizens from the award group (id.).

b. July 11, 1994 Motion

SESCO contended that the Department should reconsider D.P.U. 91-234-C and not approve any contracts until it has afforded all parties to this proceeding procedural due process to comment on the contracts under review after obtaining adequate discovery (July 11, 1994 Motion at 2). Accordingly, SESCO contended the Department's issuance of D.P.U. 91-234-C without allowing all parties an opportunity to comment and to obtain necessary information was the result of mistake or inadvertence (id. at 3).

B. COMPANIES' RESPONSE

1. Motion to Reopen Hearing

a. June 6, 1994 Motion

The Companies stated that SESCO failed to show good cause for reopening hearings in D.P.U. 91-234 (June 13, 1994 Response at 2). The Companies contended that this standard is necessarily high given the importance of the finality of a decision and of encouraging parties to address issues in a comprehensive fashion during hearings (id. at 2, citing Ruth C. Nunnally d.b.a. L&R Enterprises, D.P.U. 92-34-A at 4 (1993) ("Nunnally");

Boston Edison Company, D.P.U. 90-335-A at 4 (1992) ("Boston Edison"); and Fall River Gas Company, D.P.U. 89-199-A (1989) ("Fall River Gas"). The Companies also stated that SESCO did not raise any factual or evidentiary basis for its request (id.). In support of their contention, the Companies stated that the response to DPU-RR-III-7 contained a proposal summary, and that the actual proposal of Citizens has been in the record and was relied on by the Companies in order to determine whether or not the proposal met the comprehensiveness threshold requirements (id.).¹⁰ The Companies also contended that the Department reviewed the application of the comprehensiveness thresholds, and that Citizens' proposal was consistent with the RFP (id.).

The Companies further contended that SESCO did not demonstrate that its motion is consistent with the Department's balancing test, in that SESCO did not raise the question of public interest, the interest of the Companies, and the interest of other proposers (id. at 3). The Companies stated that an additional hearing is unnecessary and that the uncertainty associated with additional hearings would affect the public interest in securing cost-effective energy resources (id.). The Companies also stated that the delay may adversely affect the proposers in the award group (id.). Accordingly, the Companies requested that the Department deny SESCO's Motion to Reopen Hearings (id.).

¹⁰ Substantively, the Companies contend that the use of electricity for water heating in the residential non-heating market segment is limited, and while Citizens did not commit to achieving savings from domestic hot water end uses, it would address hot water measures to the limited extent that such opportunities were available (Response at 2). Accordingly, the Companies contended that Citizens' proposal met the comprehensiveness threshold requirements of the RFP (id.).

b. July 11, 1994 Motion

The Companies stated that SESCO has failed to show good cause for reopening hearings in D.P.U. 91-234 (July 11, 1994 Response at 2). The Companies contended that this standard is necessarily high given the importance of the finality of a decision and of encouraging parties to address issues in a comprehensive fashion during hearings (id. at 2, citing Nunnally; Boston Edison; and Fall River Gas Company). The Companies also stated that SESCO did not raise any factual or evidentiary basis for its request (id.). In support of their contention, the Companies stated that SESCO did not identify any interest in the review of contracts for market segments in which it had not submitted proposals, and that the disclosure of such contracts would adversely affect the Companies' ability to negotiate with SESCO and other proposers (id.).

The Companies also contended that SESCO did not demonstrate that its motion is consistent with the Department's balancing test, in that SESCO did not raise the question of public interest, the interest of the Companies, and the interest of other proposers (id.). The Companies stated that an additional hearing is unnecessary and that the uncertainty associated with additional hearings would affect the public interest in securing cost-effective energy resources (id.). The Companies also stated that the delay may adversely affect the proposers with approved energy savings agreements (id.). Accordingly, the Companies requested that the Department deny SESCO's Motion to Reopen Hearings (id.).

2. Motion for Reconsideration

a. June 6, 1994 Motion

The Companies contended that SESCO did not satisfy the Department's standard for reconsideration (id. at 4). The Companies stated that SESCO did not bring to light any previously unknown or undisclosed fact (id.). The Companies stated that Citizens' proposal was in the evidentiary record, considered by the Companies in the selection of the award group, and reviewed by the Department in Phase III (id.). The Companies stated that SESCO did not suggest any mistake or inadvertence on the part of the Department (id.). Accordingly, the Companies requested that the Department deny SESCO's Motion for Reconsideration (id.).

b. July 11, 1994 Motion

The Companies contended that SESCO did not satisfy the Department's standard for reconsideration (July 11, 1994 Motion at 3). The Companies stated that SESCO did not bring to light any previously unknown or undisclosed fact (id.). The Companies stated that the Department was aware of all relevant considerations relating to the Companies' request for confidential treatment of solicitation materials, weighed the competing interests, and recognized the benefits that would be secured for customers through the temporary protection of competitively sensitive materials (id.). The Companies stated that SESCO's attempt to classify such rulings as a mistake is without substance. (id.). Accordingly, the Companies requested that the Department deny SESCO's Motion for Reconsideration (id.).

C. STANDARD OF REVIEW

1. Motion to Reopen Hearings

The Department's regulations provide that hearings may not be reopened after having been closed, except upon motion and showing of good cause. 220 C.M.R. § 1.11(8). In determining what constitutes good cause, the Department must consider the underlying statutory and regulatory requirements. See Boston Edison, above. See also, Nunnally, above. In addition, the Department must balance the public interest, the interest of the appealing party, and the interests of other parties. Boston Edison at 4, Nunnally at 5.

2. Motion for Reconsideration

The Department's regulations provide that a party may file a motion for reconsideration. 220 C.M.R. § 1.11(10). Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision after review and deliberation. Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Essex County Gas Company, D.P.U. 87-59-A at 2 (1988); Western Massachusetts Electric Company, D.P.U. 85-270-C at 12-13 (1987); Hutchinson Water Company, D.P.U. 85-194-B at 1 (1986).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Western Massachusetts Electric Company, D.P.U. 84-25-A at 6-7 (1984); Boston Edison Company, D.P.U. 1720-B at 12 (1984); Hingham Water

Company, D.P.U. 1590-A at 5-6 (1984); Boston Edison Company, D.P.U. 1350-A at 4 (1983); Trailways of New England, Inc., D.P.U. 20017 at 2 (1979); Cape Cod Gas Company, D.P.U. 19665-A at 3 (1979).¹¹ Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989), citing Western Union Telegraph Company, D.P.U. 84-119-B (1985).

D. ANALYSIS AND FINDINGS

1. Motion to Reopen Hearings

a. June 6, 1994 Motion

The Department requires a party to demonstrate good cause in order to reopen hearings after they have been closed. The Department's good cause standard requires an analysis of the underlying regulatory requirement and a balancing of the interests involved. SESCO requested that the Department reopen hearings in order for SESCO to review information supplied in response to DPU-III-RR-7.¹² The response to the record request, filed on May 20, 1994, provided a summary of information that was previously filed with the

¹¹ The Department has denied reconsideration when the request rests on an issue or on updated information presented for the first time in the motion for reconsideration. See generally Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987).

¹² In its June 22, 1994 Reply, SESCO stated that based on the Companies' June 13, 1994 Response, an additional hearing on the DPU-III-RR-7 may not be necessary (June 22, 1994 Reply at 2).

Department. To the extent that this information was available to SESCO prior to the close of hearings,¹³ SESCO had an opportunity to address its concerns during the scheduled hearings.¹⁴ Further, the Department reviewed the information prior to issuing D.P.U. 91-234-B, and found that with the exceptions noted, the Companies' screening process was acceptable. D.P.U. 91-234-B at 13.

The Department must also consider, in addition to SESCO's interests, the public's interest, the Companies' interest, and the interest of other bidders in the solicitation. In balancing the interests involved, the Department finds that, because it addressed the issues raised by SESCO in D.P.U. 91-234-B, the public's interest in implementing DSM programs procured through the IRM process as soon as possible, and the Companies' and award group winners' interest in reliance on the Department's Order outweigh SESCO's interest in additional hearings. Accordingly, SESCO's request for an additional hearing is denied.

b. July 11, 1994 Motion

The Department requires a party to demonstrate good cause in order to reopen hearings after having been closed. The Department's good cause standard requires an analysis of the underlying regulatory requirement and a balancing of the interests involved.

¹³ The information was filed with the Department on May 5, 1994 with a request for confidential treatment of certain information in the filing through Phase IV of the IRM process. At the May 10, 1994 evidentiary hearing, the Hearing Officer granted the Companies' request. SESCO did not object to the Companies' request for confidential treatment of bidder proposals. See Tr. 2, at 10-16.

¹⁴ At the May 10, 1994 evidentiary hearing, SESCO did in fact question the Companies' witnesses regarding Citizens' proposal. See Tr. 2, at 46-47.

SESCO requested that the Department reopen hearings in order for SESCO to review and comment on contracts submitted filed in Phase IV of the proceeding. The IRM regulations provide that the Department shall review contracts between an electric company and project developers to determine whether they comply with 220 C.M.R. §§ 10.00 et seq. and are in the public interest. The IRM regulations do not require the Department to open an investigation, or hold adjudicatory hearings to review contracts submitted in Phase IV.

Compare 220 C.M.R. § 10.03(11). (The Department shall open an investigation on the electric company's initial filing and proposed RFP.) Compare also 220 C.M.R. § 10.05(3). (The Department shall review the electric company's proposed resource plan. The Department shall hold adjudicatory hearings, ...) The IRM regulations contemplate a limited final review of previously-approved proposals. See D.P.U. 86-36-F at 53. Further, SESCO did not request that the Department open an investigation or hold adjudicatory hearings in its review of the contracts submitted in Phase IV.

The Department must also consider, in addition to SESCO's interests, the public's interest, the Companies' interest, and the interests of other proposers. In balancing the interests involved, the Department finds that because the Department's review was consistent with the IRM regulations, the interest in finality and reliance on the Department's Order outweigh SESCO's interest in additional hearings.¹⁵ Accordingly, SESCO request to reopen hearings is denied.

¹⁵ In balancing the interests, the Department notes that SESCO was a bidder in only the residential sectors.

2. Motion for Reconsideration

a. June 6, 1994 Motion

SESCO has requested that the Department reconsider its Order in D.P.U. 91-234-B. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department take a fresh look at the record for the purpose of modifying a decision after review and deliberation. SESO's request for reconsideration has not brought to light any previously unknown or undisclosed facts. Further, SESO does not contend that the Department's Order was the result of mistake or inadvertence. Accordingly, SESO has not met the Department's standard for reconsideration, and its request is denied.

b. July 11, 1994 Motion

SESCO contends that as a result of the Department's review of contracts submitted for approval in Phase IV of the Companies' IRM proceeding, it has been denied procedural due process. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department take a fresh look at the record for the purpose of modifying a decision after review and deliberation. SESO's request for reconsideration has not brought to light any previously unknown or undisclosed facts. Further, SESO's contention that the Department's Order resulted in a denial of SESO's procedural due process rights is not the type of mistake or inadvertence for which the Department grants reconsideration.¹⁶ Accordingly, SESO has not met the Department's

¹⁶ The Department has also denied SESO's request to reopen hearings in this proceeding. See D.,1.,b., above.

standard for reconsideration, and its request is denied.

III. D.P.U. 94-115

A. SESCO's Petition as an Aggrieved Bidder

SESCO contended that Commonwealth improperly excluded it from the final award group for electric heating and non-heating residential sectors (June 7, 1994 Petition at 2). SESO also contended that the Companies included bidders in the award group that failed to meet the minimum comprehensiveness threshold requirements of the RFP (id. at 2-3). SESO stated that it has not had the opportunity to review the bidder proposals in order to determine if there are additional ways in which it is an aggrieved bidder (id. at 3).

In addition, SESO requested that Commonwealth be enjoined from signing and/or seeking approval of any residential heating or residential non-heating DSM contracts pending resolution of this matter, and that Cambridge be enjoined from signing and/or seeking approval of any DSM contract with Citizens Conservation Corporation in the residential non-heating sector pending resolution of this matter (id. at 4). Finally, SESO requested that the Department order Commonwealth to include SESO within the final award group for the residential heating and non-heating sectors (id.).

B. Companies Response

In their June 16, 1994 Motion, the Companies stated that (1) SESO's June 7, 1994 Petition will result in an unnecessary and burdensome administrative process that is contrary to the policies and directives of the Department; (2) due to principles of issue preclusion, SESO is not entitled to relief; (3) SESO's petition is based on erroneous and misleading

factual representations; and (4) SESCO has not established any basis for the Department to exercise its discretion to open a separate proceeding (June 16, 1994 Motion at 4). In support of their June 16, 1994 Motion, the Companies stated that SESCO's June 7, 1994 Petition is a reargument of positions rejected by the Department in D.P.U. 91-234-B, is frivolous given the clear and compelling findings of the Department, and will frustrate the Companies' ability to secure cost-effective energy programs for the benefit of their customers (id.).

The Companies contended that SESCO's June 7, 1994 Petition is an attempt to relitigate issues previously and conclusively decided by the Department, and in the absence of changed circumstances, SESCO should be bound by the Department's findings (id. at 6). The Companies also contended that the inclusion of Citizens in the award group has been fully litigated and decided and that SESCO's argument results from a misinterpretation of the record (id. at 7). Finally, the Companies argued that the Department has discretion whether to open an investigation in response to SESCO's June 7, 1994 Petition, and that SESCO has failed to demonstrate justification for a separate and repetitive review of the Companies' proposal screening and selection processes (id.).

In response to SESCO's June 22, 1994 Motion, the Companies stated that contract negotiations were continuing, and that providing the requested information to SESCO would be contrary to the goals of fairness and equity advanced by the Companies throughout this proceeding (June 30, 1994 Response at 3). In addition, the Companies argued that SESCO's June 22, 1994 Motion is moot by reason of its June 22, 1994 Reply, and the Companies' June 16, 1994 Motion to Dismiss (id.).

C. Standard of Review

The IRM regulations provide that a project developer aggrieved by an action of a company may petition the Department to investigate such action. 220 C.M.R. § 10.07(3). The IRM regulations further provide that the Department may, at its discretion, open an investigation regarding such petition. Id. The Department is allowed significant latitude in the exercise of matters left to its discretion. See Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 (1975); KES Brockton, Inc. v. Department of Public Utilities, 416 Mass. 158 (1993).

D. Analysis and Findings

The IRM regulations provide that in Phase III, the Department shall review an electric company's proposed resource plan. 220 C.M.R. § 10.05(3). An electric company's resource plan shall be approved if found to comply with 220 C.M.R. §§10.00 et seq. Id. In its Phase III review, the Department found that the overall proposal evaluation process employed by the Companies was implemented in a manner consistent with the requirements and objectives of the IRM regulations and the Companies' DSM RFP, and was conducted in a manner that gave consistent and equitable treatment to all bidders. D.P.U. 91-234-B at 31. In addition, the Department found that the Companies' award group represents the mix of resources that has the likelihood of resulting in a reliable supply of electrical service at the lowest total cost to society consistent with the Companies' DSM RFP. Id. at 32. Accordingly, the Department approved the Companies' resource plan. Id. at 41. SESCO was allowed to intervene as a party in D.P.U. 91-234, conducted cross-examination of the

Companies' witnesses, and submitted initial and reply briefs. The Department finds that SESCO's June 7, 1994 Petition is an attempt to relitigate issues previously and conclusively decided by the Department. Therefore, the Department exercises its discretion, and declines to investigate the issues raised in the June 7, 1994 Petition.¹⁷ Accordingly, SESCO's motion to compel production of information provided by the Companies as confidential or proprietary in Phase III and Phase IV of D.P.U. 91-234 is denied as moot.¹⁸

¹⁷ The Companies' June 13, 1994 Petition to intervene, and the Companies' June 13, 1994 Motion to Dismiss are moot.

¹⁸ To the extent that SESCO's request is for information provided by the Companies as confidential or proprietary in D.P.U. 91-234, the request is also denied. First, the Hearing Officer has ruled on the Companies' requests, and second, the Department has denied SESCO's June 6, 1994 Motion for Reconsideration.

IV. ORDER

After due consideration, it is

ORDERED: That the June 6, 1994 Motion to Reopen Hearings in D.P.U. 91-234 by SESCO, Inc. is denied; and it is

FURTHER ORDERED: That the June 6, 1994 Motion for Reconsideration of D.P.U. 91-234-B by SESCO, Inc. is denied; and it is

FURTHER ORDERED: That the July 11, 1994 Motion to Reopen Hearings in D.P.U. 91-234 by SESCO, Inc. is denied; and it is

FURTHER ORDERED: That the July 11, 1994 Motion for Reconsideration of D.P.U. 91-234-C by SESCO, Inc. is denied; and it is

FURTHER ORDERED: That the June 7, 1994 petition for an investigation as an aggrieved bidder by SESCO, Inc. is denied.

By Order of the Department,

Kenneth Gordon, Chairman

Barbara Kates-Garnick, Commissioner

Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).